

FEBRUARY 6, 1767.



A N S W E R S

F O R

HENRY DRUMMOND, of *Great George Street, Westminster,*

T O T H E

CONDESCENDENCE for *Allan Ramsay of Kinkell.*

PETER COLVILL, younger, of *Ochiltree*, stood many Years upon the Roll of Freeholders for the County of *Kinross*, in virtue of certain Lands, of which he was possessed in that County.

The Respondent having acquired Right to these Lands in *September 1764*, he did, in the Month of *June 1765*, lodge with the Sheriff-clerk of the County, a Claim to be inrolled at the next *Michaelmas* Meeting, which fell to be held upon the second *Tuesday* of *October* thereafter.

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It would seem, that the Freeholders of this County were unwilling to admit any new Voters upon the Roll; for, notwithstanding the Lodgement of this and other Claims, none of them thought fit to attend, or to hold any Court for that Year.

This Neglect obliged the Respondent to lodge a new Claim, in Summer last, with a view to be inrolled at the Meeting to be held in the Month of *October* last.

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At this Meeting, the Respondent found in the Gentleman, who by himself composed the Majority of the Meeting, the same Want of Inclination to do him Justice; for, although Mr. *Rankine* of *Colden* voted for inrolling him, his Claim was rejected by Mr. *Ramsay* of *Kinkell*, the only other Freeholder present, who, by his Priority of Place on the Roll, had it in his Power to carry every Question by a Casting-vote.

The Respondent complained to your Lordships, in consequence of the Statute of the 16th of his late Majesty.

To this Complaint Answers were put in by Mr. *Ramsay*, in which, he, *inter alia*, insisted, that as the Respondent's Lands appeared from a Roll transmitted to the Court of Exchequer in the Year 1720, to have made Part of a *cumulo* Valuation at that Time, so no Evidence had been produced, to instruct a subsequent Division of that *cumulo* Valuation.

The Respondent replied, and, after observing, that the Roll 1720 could not be considered as an authentick Valuation-roll of the County, he appealed to a Roll made up in the Year 1738, and signed by the Collector and Clerk of Supply, as Evidence, that his Lands had been divided, and were of the Valuation set forth in his Claim.

Mr. *Ramsay* being extremely anxious to keep the Respondent off the Roll as long as possible, and imagining, that the best Way to gain this End, would be, to involve the Respondent in a Proof, he gave in Duplies, in which, after endeavouring to support the Roll 1720, he expressed himself in the following Terms: " In support then of this Objection, " as Mr. *Ramsay* is now informed, that the Complainer's " Lands were separately valued, without any Cognition " whatever, but in consequence of the Feu-contracts granted " by Lord *Colvill*, or his Successors to his Vassals, whereby " it was agreed, that their several Feus should be valued at a " certain Rate, in order to their bearing the Cess and other " publick Burdens accordingly. If that Fact is denied, he " hopes your Lordships will allow him a Diligence, to reco-
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“ ver the several Feu-contracts, and other Writings, entered
 “ into betwixt the Lord *Colvill* or his Successors, and their
 “ Vassals, in order to shew, that the Complainer's Lands
 “ stand presently valued in the Cess-books, in terms of these
 “ Feu-contracts, which, if it appear, it is presumed, it will
 “ at least subject the Complainer to the Necessity of shewing,
 “ that the separate Valuation of his Lands, proceeded upon
 “ some other Ground than that of the Consent of the several
 “ Feuers : And, if it should not appear from these Contracts
 “ themselves, Mr. *Ramsay* is willing to undertake a Proof, if
 “ your Lordships will allow the same, that any such Division
 “ proceeded altogether upon the Consent of Parties.”

When the Cause came to be advised, it occurred to your Lordships, that, before any Proof could be allowed, it would, at least, *be incumbent* upon Mr. *Ramsay* to condescend more specially upon the Facts which he offered to prove ; he was therefore appointed to do so, and a Condescendence having been accordingly given in, the Respondent comes now, by Permission of the Court, to offer a few Observations upon it.

It was, no doubt, expected by the Court, when this Condescendence was appointed to be given in, that Mr. *Ramsay* would, at least, have descended more particularly into the Facts which he meant to prove, than he had done in his Duplies, and that he would have *positively* averred the Truth of every Alledgeance that he proposed as the Subject of Proof : But when the Condescendence is looked into, it is found to consist only of two Paragraphs, and, instead of telling your Lordships that he *will* prove, he has not ventured to go further than to inform the Court that he *expects* to prove the Circumstances upon which he founds. The Meaning of this Language is too plain to escape Observation, and must convince your Lordships, that Mr. *Ramsay* is proceeding altogether upon Conjecture, and has no other Object in view, by demanding a Proof, than to obtain a Delay ; but, in this,
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the Respondent is satisfied, that he will meet with no Countenance from your Lordships. The Respondent's Lands stand separately valued in the only authentick Roll of this County that is now extant, and, ever since the Year 1738, they have paid Cefs in conformity with the Valuation at which they are stated in that Roll; it will therefore require something more than *Conjectures* or *Expectations* upon the Part of Mr. *Ramsay*, to persuade your Lordships to put off the Determination of his Complaint till the Event of a Proof, which may be protracted for a considerable Time, especially when it is considered, that, in virtue of the same Lands, Mr. *Peter Colwill*, the former Proprietor, stood long upon the Roll of Freeholders, and that Mr. *Robert Colwill* was even elected Member of Parliament for the County, upon other Lands which make Part of the pretended *cumulo* Valuation 1720, that Mr. *Ramsay* supposes still to remain undivided.

The Respondent further apprehends, that every Fact contained in this Condescendence is perfectly irrelevant.

The first Article is, that before the Year 1730, or thereby, the whole Estate of *Cliesh*, of which the Respondent's Lands make a Part, was valued in *cumulo*, and that the Cefs was paid for the same accordingly, without distinguishing any particular Valuation of the several Parcels of that Estate; and for Evidence of this Fact, Mr. *Ramsay* refers to what he calls the Valuation-roll 1720, now in Process, and to other old Valuation-rolls and Writings, which he *expects* to recover.

If Mr. *Ramsay* had offered to prove a *cumulo* Valuation, by authentick Rolls subsequent to the Year 1738, there might have appeared some Relevancy in the Offer; but it is surely impossible to disprove a Division appearing in the Roll 1738, by other Rolls prior to that Period; besides, the Roll 1720 can afford no Evidence of a *cumulo* Valuation at that Time. It is only certified by the Sheriff, who transmitted it to the Exchequer for the Purpose of fixing Compositions, and as it was sufficient for that Purpose to ascertain the total Valuation

tion of the Crown's Vassals, no Evidence can from thence arise, that the several Lands, the Superiority whereof remained with these Vassals of the Crown, had not been separately valued prior to that Time; and as to the other old Valuation-rolls, which Mr. *Ramsay* says he expects to recover, no Regard can be paid to them, unless he had told what they are.

The next Article of the Condescendence is, "That after that Part of the Barony of *Cliesh*, to which the Respondent has Right, was feued out, no separate Valuation was made by the Authority of a general Meeting of the Commissioners of Supply of the County, the Method followed having been no other than that of Consent of Parties, the Collector of the Cess entered that Parcel of the Lands as valued at such a Rate, without any sort of Cognition whether that was the just Rate or not;" and this Article Mr. *Ramsay* likewise expects to prove by Recovery of the Feu-contracts, and by the Evidence of Witnesses who were Parties to, or knew of, the Transaction.

But this Article is equally irrelevant with the former.—Even supposing, that by these Feu-contracts, the Feuers were taken bound to relieve their Superior of the Cess, Ministers Stipends, and other publick Burdens, according to a certain valued Rent, it will by no Means follow from thence, that no regular Division had been made at that Time, and far less will it prove, that no regular Division was afterwards made by the Commissioners of Supply, who might have approved of the Settlement made by the Parties, and the subsequent Payment of Cess, as sufficient Proof of the separate Valuation of the several Parcels of the Land sought to be divided. If, indeed, no Valuation-roll had appeared, in which the Respondent's Lands stood separately valued, it might, perhaps, have been a plausible Objection, that an Agreement betwixt a Superior and his Vassals, was not sufficient Evidence of a regular Division, however the Payment

of Cefs, for a long Courfe of Years, in conformity to that Agreement, might entitle them to be rated at the particular Valuations thereby affigned them. But, as the Respondent's Lands ftand feperately valued in the oldeft authentick Roll of the County that now appears, figned by the Collector and Clerk of Supply, as the Rule by which the former was authorifed to levy the Cefs, it muft be prefumed, at this Dif- tance of Time, that a Divifion of the *cumulo* Valuation, in which thefe Lands were originally included, had been made in a regular Manner by the Commiffioners of Supply, efpecially, when it is confidered, that Mr. *Ramfay* has neither offered, nor fo much as faid, that he *expected* to fhew, that any higher Valuation was given by this Roll to the Respondent's Lands, than what they were juftly entitled to. It has been properly obferved in the Respondent's Replies, that it is not ufual to keep regular Documents of the Proceedings of the Commiffioners of Supply, in Matters of this Kind. After a Divifion is made, and the Lands are ftated in the Cefs-books, at the particular Valuation feverally allotted to them, Parties feldom think of demanding Extracts, or preferving the Proofs that were laid before the Commiffioners of Supply. But if, on that Account, it were competent, at the Dif- tance of thirty Years thereafter, to challenge their Right to fuch Valuation, without pretending that any Injuftice had been committed, the Situation of many Land-proprietors in *Scotland*, would, in this refpect, be very unhappy.

The Respondent, upon this Head, will further beg leave to obferve, that, as it was found by the Decifion of the Court, in the Cafe of *Campbell contra Stirling*, 6th March 1754, that the Divifion made by a private Meeting of the Commiffioners was valid, becaufe afterwards homologated, by Reference being made to it in the Proceedings of a legal Meeting, this Roll 1738, upon which the Respondent founds, cannot now be brought under Challenge, in refpect, that not only the Cefs, but likeways the High-way and Bridge Mo-
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ney, has ever since been proportioned by the Commissioners of Supply according to this Roll.

Mr. *Ramsay* has likewise been pleased to introduce into his Condescendence, another Objection to the Respondent's Title to be inrolled, founded upon an Alledgeance, that Part of his Lands do not lie within the County of *Kinross*. But as this Objection was fully answered formerly, and has no Relation with the Facts as to which the Court desired a Condescendence, the Respondent would think himself to blame, were he to detain your Lordships longer, by making an unnecessary Repetition. He will therefore conclude, in the Hopes, that your Lordships will find, that the Facts stated in this Condescendence are perfectly irrelevant, and that no Proof ought to be allowed. He is in Possession of a certain Valuation, established by the oldest authentick Roll that now appears. If Mr. *Ramsay* is of opinion, that the Valuation given to the Respondent by that Roll, is too high, he may insist in a proper Action for having it diminished; but, in this summary Complaint, it is altogether incompetent to attempt it.

In respect whereof, &c.

ALEX. WIGHT.



